

Re: Rule 1-310 X
[11/19/2004]
Commission Meeting
Open Session Item III.J.
Drafter: Mark L. Tuft

**PROPOSED RULE ON PROFESSIONAL INDEPENDENCE
OF A LAWYER**

Draft No. 6
Dated: November 1, 2004

**RULE 5.4 [1-310 X] AVOIDING INTERFERENCE BY NON-LAWYERS IN THE
PROFESSIONAL INDEPENDENCE OF A LAWYER¹**

- (a) A lawyer or law firm shall not share legal fees directly or indirectly with a person who is not a lawyer or an entity that is not authorized to practice law.
- (b) Paragraph (a) is not intended to prohibit:
 - (1) The payment of money in a lump sum or² over a reasonable period of time after the lawyer's death to the lawyer's estate³ or to one or more specified persons pursuant to an agreement by a lawyer with the lawyer's law firm or with another lawyer in the firm.
 - (2) Payment by a lawyer or law firm of the agreed price for purchasing the law practice of a lawyer who is deceased or who has a conservator or other fiduciary representative, pursuant to the provisions of rule 2-300 [Model Rule 1.17], to the lawyer's estate or fiduciary representative.⁴

- (3) A lawyer or law firm including non-lawyer employees in a compensation or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, provided such plan does not violate these rules or the California State Bar Act.
- ~~(4)~~ *[DELETED paragraph re sharing court-awarded fee w/ non-profit]*⁵
- (4) The payment of a prescribed registration, referral, or other fee by a lawyer to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California.⁶
- (c) A lawyer shall not form a partnership or other business entity with a person who is not a lawyer if any of the activities of the partnership or other entity consist of the practice of law.
- (d) A lawyer shall not permit a non-lawyer⁷ who recommends, employs, or pays the lawyer to render legal services for another to direct, regulate or interfere with the lawyer's independence of professional judgment, or with the client-lawyer relationship, in rendering such legal services.
- (e) A lawyer shall not practice with or in the form of a professional corporation or entity authorized to practice law for a profit if:
 - (1) A person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

- (2) A person who is not a lawyer is a corporate director or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation; or
- (3) A person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.

ENDNOTES

1. **RRC Action**: At 8/27 & 8/28/04 Meeting, RRC voted 5 to 4 to change title of rule from “Professional Independence of a Lawyer” to “Avoiding Interference by Non-lawyers in the Professional Independence of a Lawyer.” *See also* change to paragraph (d).
2. **RRC Action**: At 8/27 & 8/28/04 Meeting, Jerry Sapiro’s recommendation to add the phrase “in a lump sum or” in paragraph (b)(1) was deemed approved. This change required the deletion of Discussion ¶. [3] from Discussion, Draft 3.
3. **RRC Action**: At the 8/27 & 8/28/04 Meeting, RRC voted 4 to 2 (1 abstention) not to add to (b)(1) following the phrase “the lawyer’s estate”: “. . . to the trustee of a trust established by the lawyer, . . .”.
4. **RRC Action**: At the 8/27 & 8/28/04 Meeting, Jerry Sapiro’s request that paragraph (b)(2) be amended by adding after the fourth line, following the phrase “to the lawyer’s estate,” the phrase: “. . . , to the trustee of a trust established by the lawyer, to the lawyer’s attorney-in-fact, or to the conservator of the lawyer’s estate,” was not acted upon, but the drafters were asked to consider including this concept in a Discussion paragraph.
5. **RRC Action**: At 8/27 & 8/28/04 Meeting, RRC voted 4 to 3 (1 abstention) to delete previously-numbered sub-paragraph (b)(4) concerning a lawyer sharing fees with a non-profit. Inclusion of that concept in a Discussion paragraph was deemed approved. See Discussion Draft 3, Discussion ¶. [8].
6. **RRC Action**: At 8/27 & 8/28/04 Meeting, RRC voted 4 to 3 (1 abstention) to delete the clause “provided the lawyer has the client’s informed consent” from what is now numbered subparagraph (b)(4).
7. **RRC Action**: Word “person” was changed to “non-lawyer” to conform paragraph (d) to the new title voted at the 8/27 & 8/28/04 Meeting. The issue of a similar paragraph that applies to lawyers “who recommend, employ, or pay ...” will be taken up when RRC takes up Model Rules 5.1 and 5.2.

DISCUSSION

Draft No. 4
Dated: November 1, 2004

[1] A lawyer is required to maintain professional independence of judgment in rendering legal services. The provisions of this rule protect the lawyer's independence of professional judgment by restricting the sharing of fees with a person or entity that is not authorized to practice law and by prohibiting a non-lawyer from directing or controlling the lawyer's professional judgment when rendering legal services to another.¹

[2] Other rules also protect the lawyer's professional independence of judgment. See e.g., Rule 2-200 and Rule 3-310(F).²

[3] [DELETED]³

[4] A lawyer's shares of stock in a professional law corporation may be held by the lawyer and/or the lawyer's spouse or domestic partner as trustees of a revocable living trust for estate planning purposes during the lawyer's life, provided that no non-lawyer trustee has the right to direct or control the professional judgment of the lawyer or the activities of the professional law corporation and the trust instrument expressly so provides.

[5] A lawyer's participation in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of this rule.

[6] This rule is intended to apply to group, prepaid, and voluntary legal service programs, activities and organizations.

[7] [DELETED]⁴

[8] This rule is not intended to prohibit the payment of court-awarded legal fees to a non-profit public benefit corporation that meets all of the requirements and complies with the provisions of Corporations Code Section 13406(b).

[9] This rule is not intended to override any contractual agreement or relationship between insurers and insureds regarding the provision of legal services.

ENDNOTES

1. **RRC Action**: At 8/27 & 8/28/04 Meeting, Jerry Sapiro's suggestion to revise the second sentence of Discussion ¶. [1] was deemed approved. At the same meeting, Kurt Melchior's motion to delete the first sentence of ¶. [1] was not seconded.
2. **Drafter's Note**: If adopted by the RRC, the Discussion should probably eventually include a reference to the counterpart rule to 1-320X ("influence of supervising lawyers on subordinate lawyers") currently being developed by Nace Ruvolo. See 11/19/04 Meeting, Agenda Item III.H.
3. **RRC Action**: With the addition of the phrase "in a lump sum or" to paragraph (b)(1) of the rule, Discussion ¶. [3], which provided, "Paragraph (a)(1) is intended to also apply to the payment of a lump sum following the lawyer's death," was deleted.
4. **RRC Action**: At 8/27 & 8/28/04 Meeting, Discussion ¶. [7], which had provided "This rule is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public. This rule is also not intended to apply to non-profit court-annexed limited legal service programs," was deemed deleted. The deletion of ¶. [7] was in response to concerns Jerry Sapiro raised in his 8/24/04 e-mail to the RRC, item #7, about deleting the first sentence, and Tony Voogd's request at the 8/28/04 session that the second sentence be deleted as well.

Re: Rule 1-310 X
~~8/27-8/28/04~~11/19/2004
Commission Meeting
Open Session Item III.AJ
Drafter: Mark L. Tuft

**PROPOSED RULE ON PROFESSIONAL INDEPENDENCE
OF A LAWYER**

Draft No. ~~5~~6
Dated: ~~August~~November 1, 2004

RULE 5.4 [1-310 X] AVOIDING INTERFERENCE BY NON-LAWYERS IN THE
PROFESSIONAL INDEPENDENCE OF A ~~LAWYER~~⁺LAWYER¹

- (a) A lawyer or law firm shall not share legal fees directly or indirectly with a person who is not a lawyer or an entity that is not authorized to practice law.
- (b) Paragraph (a) is not intended to prohibit:
 - (1)² The payment of money in a lump sum or² over a reasonable period of time after the lawyer's death to the lawyer's estate³ or to one or more specified persons pursuant to an agreement by a lawyer with the lawyer's law firm or with another lawyer in the firm.³
 - (2)² Payment by a lawyer or law firm of the agreed price for purchasing the law practice of a lawyer who is deceased or who has a conservator or other fiduciary representative, pursuant to the provisions of rule 2-300 [Model Rule 1.17], to the lawyer's estate or fiduciary representative.

(3) A lawyer or law firm including non-lawyer employees in a compensation or retirement plan even though the plan is based in whole or in part on a profit-sharing arrangement, provided such plan does not violate these rules or the California State Bar Act.

(4) *[DELETED paragraph re sharing court-awarded fee w/ non-profit]*⁴

(4) The payment of a prescribed registration, referral, or other fee by a lawyer to a lawyer referral service established, sponsored and operated in accordance with the State Bar of California's minimum standards for a lawyer referral service in California, ~~provided the lawyer has the client's informed written consent.~~⁵⁶

(c) A lawyer shall not form a partnership or other business entity with a person who is not a lawyer if any of the activities of the partnership or other entity consist of the practice of law.

(d) A lawyer shall not permit a ~~person~~non-lawyer⁷ who recommends, employs, or pays the lawyer to render legal services for another to direct, regulate or interfere with the lawyer's independence of professional judgment, or with the client-lawyer relationship, in rendering such legal services.

(e) A lawyer shall not practice with or in the form of a professional corporation or entity authorized to practice law for a profit if:

- (1) A person who is not a lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) A person who is not a lawyer is a corporate director or officer thereof or occupies a position of similar responsibility in any form of association other than a corporation; or
- (3) A person who is not a lawyer has the right or authority to direct, influence or control the professional judgment of a lawyer.⁶

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DISCUSSION

Draft No. ~~3~~4
Dated: ~~August~~ November 1, 2004

[1] A lawyer is required to maintain professional independence of judgment in rendering legal services. ~~The provisions of this rule protect the lawyer's professional lawyer's independence of professional judgment in by restricting the sharing of fees with a person or entity that is not authorized to practice law and in permitting by prohibiting a third party to direct non-lawyer from directing or control controlling the lawyer's professional judgment in when rendering legal services to another.~~

1

[2] Other rules also protect the lawyer's professional independence of judgment. See e.g., Rule 2-200 and Rule 3-310(F).

2

[3] ~~Paragraph (a)(1) is intended to also apply to the payment of a lump sum following the lawyer's death.~~ [DELETED]³

[4] A lawyer's shares of stock in a professional law corporation may be held by the lawyer and/or the lawyer's spouse or domestic partner as trustees of a revocable living trust for estate planning purposes during the lawyer's life, provided that no non-lawyer trustee has the right to direct or control the professional judgment of the lawyer or the

activities of the professional law corporation and the trust instrument expressly so provides.

[5] A lawyer's participation in a lawyer referral service established, sponsored, supervised, and operated in conformity with the Minimum Standards for a Lawyer Referral Service in California is encouraged and is not, of itself, a violation of this rule.:

[6] This rule is intended to apply to group, prepaid, and voluntary legal service programs, activities and organizations.

[7] ~~This rule is not intended to apply to the activities of a public agency responsible for providing legal services to a government or to the public. This rule is also not intended to apply to non-profit court-annexed limited legal service programs.~~[DELETED]⁴

[8] This rule is not intended to prohibit the payment of court-awarded legal fees to a non-profit public benefit corporation that meets all of the requirements and complies with the provisions of Corporations Code Section 13406(b).

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